

UNITED STATES OF AMERICA  
POSTAL REGULATORY COMMISSION  
WASHINGTON, DC 20268-0001

Before Commissioners:

Robert G. Taub, Chairman;  
Michael Kubayanda, Vice Chairman;  
Mark Acton;  
Ann C. Fisher; and  
Ashley E. Poling

Competitive Product Prices  
Priority Mail Express International, Priority Mail  
International & First-Class Package International  
Service Contracts  
Priority Mail Express International, Priority Mail  
International & First-Class Package International  
Service Contract 1

Docket No. MC2020-97

Competitive Product Prices  
Priority Mail Express International, Priority Mail  
International & First-Class Package International  
Service Contract 1 (MC2020-97)  
Negotiated Service Agreements

Docket No. CP2020-101

ORDER ADDING PRIORITY MAIL EXPRESS INTERNATIONAL, PRIORITY MAIL  
INTERNATIONAL & FIRST-CLASS PACKAGE INTERNATIONAL SERVICE  
CONTRACT 1 TO THE COMPETITIVE PRODUCT LIST

(Issued March 24, 2020)

I. INTRODUCTION

The Postal Service seeks to add a new product identified as Priority Mail Express International, Priority Mail International & First-Class Package International Service

Contract 1 to the competitive product list.<sup>1</sup> For the reasons discussed below, the Commission approves the Request.

## II. BACKGROUND

On March 3, 2020, in accordance with 39 U.S.C. § 3642, 39 C.F.R. §§ 3020.30-.35, and 39 C.F.R. § 3015.5, the Postal Service filed the Request, along with supporting documents. In the Request, the Postal Service asserts that Priority Mail Express International, Priority Mail International & First-Class Package International Service Contract 1 is a competitive product that establishes rates “not of general applicability” within the meaning of 39 U.S.C. § 3632(b)(3). Request at 1. Among the supporting documents, the Postal Service included a copy of the Governors’ Decision authorizing the product, a contract related to the proposed new product, requested changes to the competitive product list, a statement supporting the Request, a certification of compliance with 39 U.S.C. § 3633(a), and financial workpapers. In addition, the Postal Service submitted an application for non-public treatment of materials requesting that unredacted portions of the Governors’ Decision and the contract, customer-identifying information, and related financial information remain under seal. *Id.* Attachment F.

The Postal Service will notify the mailer of the effective date of the Agreement after the Commission completes its review. Request, Attachment B at 3. It is set to expire June 30, 2020. *Id.*

On March 4, 2020, the Commission issued a notice establishing the two dockets, appointing a Public Representative, and providing interested persons with an opportunity to comment.<sup>2</sup>

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<sup>1</sup> USPS Request to Add Priority Mail Express International, Priority Mail International & First-Class Package International Service Contract 1 to Competitive Product List and Notice of Filing Materials Under Seal, March 3, 2020 (Request).

<sup>2</sup> Notice Initiating Docket(s) for Recent Postal Service Negotiated Service Agreement Filings, March 4, 2020.

On March 6, 2020, Chairman's Information Request No. 1 was issued.<sup>3</sup> CHIR No. 1 noted that the Agreement was structured more similarly to a domestic negotiated service agreement (NSA) than to other international NSAs and asked the Postal Service to explain whether this was a unique contract or represented a shift in how the Postal Service intended to file international NSAs. CHIR No. 1, questions 1-2. The Postal Service provided the requested responses on March 12, 2020, explaining that the Postal Service seeks to streamline internal practices by using more consistent filing practices between domestic and international NSAs.<sup>4</sup>

### III. COMMENTS

The Public Representative filed comments on March 9, 2020.<sup>5</sup> No other interested person filed comments. The Public Representative concludes that the contract should be categorized as a competitive product and added to the competitive product list, and it should generate sufficient revenue to cover its costs during the first year. PR Comments at 2-3. He characterizes as reasonable the Postal Service's assertions regarding the classification of the contract as a competitive product. See *id.* at 3. He notes that the Commission will have an opportunity to review the contract's revenue and cost data in a future Annual Compliance Determination (ACD). *Id.* at 4.

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<sup>3</sup> Chairman's Information Request No. 1 and Notice of Filing Under Seal, March 6, 2020 (CHIR No. 1).

<sup>4</sup> Response of the United States Postal Service to Chairman's Information Request No. 1, March 12, 2020, questions 1-2. (Response to CHIR No. 1).

<sup>5</sup> Public Representative Comments on Postal Service Request to Add Priority Mail Express International, Priority Mail International & First-Class Package International Service Contract 1 to the Competitive Product List, March 9, 2020 (PR Comments).

#### IV. COMMISSION ANALYSIS

The Commission has reviewed the Request, the contract, the supporting data filed under seal, the Response to CHIR No. 1, and the Public Representative's comments.

*Product list requirements.* The Commission's statutory responsibilities when evaluating the Request include assigning Priority Mail Express International, Priority Mail International & First-Class Package International Service Contract 1 to either the market dominant or competitive product list. See 39 U.S.C. § 3642(b)(1); 39 C.F.R. § 3020.34. Before adding a product to the competitive product list, the Commission must determine that the Postal Service does not exercise sufficient market power that it can effectively set the price of the product substantially above costs, raise prices significantly, decrease quality, or decrease output, without the risk of losing a significant level of business to other firms offering similar products. See 39 U.S.C. § 3642(b)(1). In addition, the Commission must consider the availability and nature of private sector enterprises engaged in delivering the product, the views of those who use the product, and the likely impact on small business concerns. See 39 U.S.C. § 3642(b)(3); 39 C.F.R. §§ 3020.32(f), (g), and (h).

The Postal Service asserts that it provides postal services of the kind provided under the contract in a highly competitive market, that other shippers who provide similar services constrain its bargaining position, and that it can therefore neither raise prices nor decrease service, quality, or output without risking the loss of business to competitors. Request, Attachment D at 2. The Postal Service states that the contract partner supports the Request, that expedited shipping is widely available from private firms, and that the Postal Service is unaware of any small business concerns that could offer comparable services to the contract partner. *Id.* at 3.

The Commission finds that the Postal Service does not exercise sufficient market power that it can effectively set the price of the proposed product substantially above costs, raise prices significantly, decrease quality, or decrease output, without the risk of

losing a significant level of business to other firms offering similar products. The availability of other private sector providers supports this conclusion. The contract partner and the Public Representative support the addition of the Priority Mail Express International, Priority Mail International & First-Class Package International Service Contract 1 product to the competitive product list. Further, there is no evidence of an adverse impact on small businesses. For these reasons, having considered the relevant statutory and regulatory requirements, the comments filed, and the Postal Service's supporting justification, the Commission finds that Priority Mail Express International, Priority Mail International & First-Class Package International Service Contract 1 is appropriately classified as competitive and is added to the competitive product list.

*Cost considerations.* Because the Commission finds Priority Mail Express International, Priority Mail International & First-Class Package International Service Contract 1 is a competitive product, the Postal Service must also show that the contract covers its attributable costs, does not cause market dominant products to subsidize competitive products as a whole, and contributes to the Postal Service's institutional costs. 39 U.S.C. § 3633(a); 39 C.F.R. §§ 3015.5 and 3015.7. As long as the revenue generated by the contract exceeds its attributable costs, the contract is unlikely to reduce the contribution of competitive products as a whole or to adversely affect the ability of competitive products as a whole to contribute an appropriate share of institutional costs. In other words, if the contract covers its attributable costs, it is likely to comply with 39 U.S.C. § 3633(a).

Based on a review of the record, the Commission finds that the rates during the term of the contract should cover the contract's attributable costs. 39 U.S.C. § 3633(a)(2). Thus, the Commission also finds that the contract should not result in competitive products as a whole being subsidized by market dominant products, in accordance with 39 U.S.C. § 3633(a)(1). Similarly, the Commission finds the contract is unlikely to prevent competitive products as a whole from contributing an appropriate

share of institutional costs, consistent with 39 U.S.C. § 3633(a)(3). See also 39 C.F.R. § 3015.7(c). Accordingly, a preliminary review of the contract indicates it is consistent with section 3633(a).

The Commission will review the contract's cost coverage and the contribution of competitive products as a whole to the Postal Service's institutional costs in the Commission's ACD to ensure that they continue to comply with 39 U.S.C. § 3633(a).

*Filing structure.* Most international NSAs are filed as products consisting of a baseline agreement and other functionally equivalent NSAs. Instead, Priority Mail Express International, Priority Mail International & First-Class Package International Service Contract 1 was filed in the style of domestic NSAs, where each NSA is filed as its own product. The Postal Service expressed that this change to filing international NSAs in a similar manner to domestic NSAs was made to streamline its internal practices. Response to CHIR No. 1, question 1. The Postal Service also indicated that it intends to file more sequentially numbered contracts in the new Priority Mail Express International, Priority Mail International & First-Class Package International Service Contracts grouping, and to establish additional Mail Classification Schedule (MCS) sections to replace the GEPS 8, 10, and 11 products. *Id.* question 2. The Postal Service intends to continue to file some international NSAs according to its current practice, particularly for inbound services. *Id.* question 1.

The Commission notes that some existing international NSA products contain unique MCS language that define differences between NSA products and products with prices of general applicability. For example, MCS § 2510.3.1(f) defines Commercial ePacket (CeP) as a service available to some products within the Global Expedited Package Services (GEPS) Contracts grouping. When requesting the establishment of a new MCS section to replace an existing international product, the Postal Service should carefully evaluate what MCS language from the replaced product will need to be

included in the new MCS section, and attach that draft MCS language to its request.<sup>6</sup> The new MCS section created by this order, called “Priority Mail Express International, Priority Mail International & First-Class Package International Service Contracts,” does not require additional MCS language beyond that found in comparable domestic MCS sections because each of its components is separately defined in MCS § 2300.

*Other considerations.* The Postal Service will notify the mailer of the effective date of the contract after the Commission has completed its review. Request, Attachment B at 3. The contract is scheduled to expire June 30, 2020, unless it is terminated sooner. *Id.*

The contract also contains a provision whereby the Postal Service can extend the contract for two 3-month periods provided the Commission is notified at least seven days prior to the contract’s expiration date. *Id.* The Commission finds the two potential 3-month extension periods are reasonable because the extension(s) should assist the Postal Service’s contract negotiations by providing additional flexibility.

If the instant contract is terminated prior to the scheduled expiration date, the Postal Service shall promptly file notice of such termination with the Commission in these dockets.

In conclusion, the Commission approves Priority Mail Express International, Priority Mail International & First-Class Package International Service Contract 1 as a new product. Revisions to the competitive product list and the MCS appear below the signature of this Order and are effective immediately.

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<sup>6</sup> The Commission also notes that it has previously approved domestic Priority Mail NSAs where the service to be provided is defined by the contract itself and differs from the definition of Priority Mail found in MCS § 2110. To maintain the clarity and accuracy of the MCS, the Commission intends to discontinue this practice. The Commission therefore encourages the Postal Service, as it transitions to filing international NSAs as individual products, to ensure that each MCS section has sufficient language to accurately describe all of the products listed in that section, revising the section language and creating new MCS sections as necessary.

## V. ORDERING PARAGRAPHS

*It is ordered:*

1. Priority Mail Express International, Priority Mail International & First-Class Package International Service Contract 1 (MC2020-97 and CP2020-101) is added to the competitive product list as a new product under Negotiated Service Agreements, International. Revisions to the competitive product list and the Mail Classification Schedule appear below the signature of this Order and are effective immediately.
2. The Postal Service shall promptly file notice of the instant contract's termination with the Commission in these dockets if the instant contract terminates prior to the scheduled expiration date.
3. The Secretary shall arrange for publication in the *Federal Register* of an updated product list reflecting the change made in this Order.

By the Commission.

Erica A. Barker  
Secretary



## CHANGE IN PRODUCT LIST

The following material represents changes to the product list codified in Appendix B to 39 C.F.R. part 3020, subpart A—Competitive Product List. These changes reflect the Commission's order in Docket Nos. MC2020-97 and CP2020-101. The Commission uses two main conventions when making changes to the product list. New text is underlined. Deleted text is struck through.

### **Appendix B to Subpart A of Part 3020—Competitive Product List**

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#### **Negotiated Service Agreements\***

International\*

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Priority Mail Express International, Priority Mail International & First-Class Package  
International Service Contract 1

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## CHANGES TO THE MAIL CLASSIFICATION SCHEDULE

The following material represents a change to the Mail Classification Schedule. The Commission uses two main conventions when making changes to the Mail Classification Schedule. New text is underlined. Deleted text is struck through.

### **Part B—Competitive Products** **2000 Competitive Product List**

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#### **Negotiated Service Agreements\***

International\*

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Priority Mail Express International, Priority Mail International & First-Class Package International Service Contract 1

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#### **2500 Negotiated Service Agreements**

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#### **2510 International**

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#### **2510.2 Negotiated Service Agreement Groups**

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- Priority Mail Express International, Priority Mail International & First-Class Package International Service (2510.15)

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#### **2510.15 Priority Mail Express International, Priority Mail International & First-Class Package International Service Contracts**

- Priority Mail Express International, Priority Mail International & First-Class Package International Service Contract 1

#### Baseline Reference

Docket Nos. MC2020-97 and CP2020-101

PRC Order No. 5459, March 24, 2020

#### Included Agreements

CP2020-101, expires June 30, 2020

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